

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30720 of 2013

Arising Out of PS.Case No. -412 Year- 2013 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

- =====
1. Anjani Kumar Choudhary @ Anjani Kumar S/o Sri Sukhdeo Choudhary @ Sukhdeo Jha Resident of Village- Koilakh, P.S.- Raj Nagar, District- Madhubani
 2. Rina Choudhary W/o Shri Anjani Choudhary Resident of Village- Koilakh, P.S.- Raj Nagar, District- Madhubani

.... Petitioners

Versus

1. The State of Bihar
2. Rupa Kumari W/o Amit Jha, Resident of Village- Zarai, P.S.- Arer, District- Madhubani D/o Shri Bab Saheb Jha, Village – Damodarpur, P.S.-Benipatti, District-Madhubani.

.... Opposite Parties

=====

Appearance:

For the Petitioner/s : Mr. Ashwini Kumar Sakhuja, Advocate.
For the State : Mr. Parmeshwar Mehta, APP.
For Opposite Party No.2 : Mr. Sanjay Kumar Ghosarvey, Advocate.
Mr. Manoj Kumar Pandey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 03-08-2018

Heard learned counsel for the petitioners, learned APP
for the State and learned counsel for the opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the cognizance order dated 31.05.2013 passed by the Judicial Magistrate, 1st Class, Madhubani in T.R. 2946 of 2013 whereby the learned Lower Court finding prima facie case against the accused persons, namely, Amitabh Jha, Ugradeo Jha, Aparna Jha, Sadhna Jha, Anjani



Choudhary and Rina Choudhary under Section 498A/34 of the Indian Penal Code and against the accused Jitendra Jha under Sections 498A/34 and 376 of the Indian Penal Code ordered to issue summon against them.

3. Opposite party no.2-complainant filed Complaint Case No. 412 of 2013 against the aforesaid accused persons and Snehta under Sections 323, 379, 307, 498A, 406, 494, 376 and 377/34 of the Indian Penal Code with the allegation in succinct that marriage of the complainant was performed with accused No.1 Amitabh Jha on 24.06.2010. After marriage, all the accused persons demanded Rs. 15 lacs blaming her not looking smart and on failure to cough up the aforesaid demand by her parents subjected her to various sorts of torture. On intervention of her father, relatives and punches, her husband took her to Bhopal where she learnt that her husband had performed second marriage with accused Snehta. On grilling her husband about the same, he thrashed her for which she filed complaint Case No. 233 of 2012 at Police Centre Piplati, but subsequently her husband was enlarged on bail on the basis of compromise. Even after bail of her husband on the basis of compromise, there was no change in the attitude of her husband. He continued to relish extra marital affairs with aforesaid Snehta. On the occasion of Holi, she arrived at her marital house. Initially her in-



laws did not allow her to enter into the house, but anyhow she entered into the house due to intervention of the villagers and when she demanded her ornaments, etc. from the accused persons, they refused to accord the same to her and demanded a car in dowry. On 05.04.2013, all the accused persons barring Jitendra Jha and Sadhna Jha tried to eliminate her, but she was saved by the passerby. Subsequently, said Jitendra Jha and Sadhna Jha took her with them at Madhubani and kept her in a hotel where they subjected her to rape and unnatural sex by administering her liquor and intoxicating substance. Anyhow, she escaped from the hotel and arrived at the house of her relative Hemant Jha. She was got treated in the Primary Health Centre, Rahika and from there her father and uncle took her to her maternal house.

4. During the course of enquiry, complainant examined herself on solemn affirmation and her three witnesses. After pursuing the complaint petition, solemn affirmation of the complainant and evidence of the witnesses and considering the materials available on record, learned Magistrate finding prima facie case against the accused persons, namely, Amitabh Jha, Ugradeo Jha, Aparna Jha, Sadhna Jha, Anjani Choudhary and Rina Choudhary under Section 498A/34 of the Indian Penal Code and against the accused Jitendra Jha under Sections 498A/34 and 376 of the Indian Penal Code



ordered to issue summon against them vide the impugned order.

5. It is submitted by learned counsel for the petitioners that the petitioner no.1 Anjani Kumar Choudhary happens to be brother-in-law and petitioner no.2 Rina Choudhary married sister-in-law of the complainant. They are living separately at Delhi since before the marriage. Petitioner no.1 is a practicing lawyer at Delhi and on 05.04.2013, he was present in the court at Delhi. They neither made any demand of dowry nor ever subjected the complainant to any sorts of torture and they have no concern with the aforesaid occurrence. There is no allegation under Sections 494, 376 and 377/34 against the petitioners. The only allegation against the petitioners is of making demand of dowry and subjecting the complainant to torture due to not coughing of the said demand. The aforesaid allegation levelled against the petitioners is general and omnibus in nature. There is no specific allegation of making any dowry demand and subjecting the complainant to any sorts of torture against them. Hence, the cognizance taken against the petitioners vide impugned order is nothing but the abuse of process of the court. Petitioners filed some documents in substantiation of their case.

6. From perusal of the record, it appears that the petitioner no.1 Anjani Kumar Choudhary happens to be brother-in-law and petitioner no.2 Rina Choudhary married sister-in-law of the



complainant. It is admitted to the parties that the petitioners are living separately at Delhi. From perusal of the record, it appears that there is no specific and clear allegation of making any dowry demand and subjecting the complainant to any sort of torture against the petitioners rather aforesaid allegations are vague and omnibus and in my considered opinion that would not be sufficient to put them on trial.

7. Hon'ble Apex Court in Geeta Mehrotra and Another vs. State of U.P. and Another reported in (2012)10 SCC 741 and **Preeti Gupta and Another Vs. State of Jharkhand and Another** reported in (2010) 7 SCC 667 has been pleased to rule that there should be a clear allegation against relatives of the husband and vague and omnibus allegation would not be sufficient to compel them to undergo agony of the trial.

8. Hon'ble Apex Court in Monju Roy and Others Vs. State of West Bengal reported in (2015) 13 SCC 693 has been pleased to observe that while we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do not find any merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out". Hon'ble Apex Court in **Kans Raj Vs. State of Punjab**



reported in (2000) 5 SCC 207 has been pleased to observe that a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. Hon'ble Apex Court in **Arnesh Kumar Vs. State of Bihar and Another** reported in (2014) 8 SCC 273 has been pleased to observe that there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, the Supreme Court



has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498A of the IPC and other relevant offences. This High Court in **Brijesh Das @ Brijesh Kumar Das & Ors. Vs. The State of Bihar &Anr.** reported in **2012(2) PLJR 545** has also held that there is specific allegation made against husband and no statement that other relatives assaulted the complainant. Allegations made against petitioner nos. 2 to 6 are vague and omnibus allegation made against the relatives of the husband, would not be sufficient to put them on a trial and set aside the cognizance order against the petitioner nos. 2 to 6 who happen to be in-laws of the complaint.

9. In the facts and circumstances of the case and in view of the aforesaid case laws, aforesaid cognizance order taken against the petitioners is quashed and this quashing petition is allowed accordingly.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	08.08.2018
Transmission Date	08.08.2018

